

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	File No. EB-01-SJ-094
)	
Javier Rodriguez.)	NAL/Acct. No. 200232680002
)	
Boqueron, Puerto Rico)	FRN 0006-0437-80

FORFEITURE ORDER

Adopted: March 26, 2002**Released: March 28, 2002**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of one thousand (\$1,000) to Javier Rodriguez (“Rodriguez”), Boqueron, Puerto Rico, for willful violation of Section 301 of the Communications Act of 1934, as amended (“*Act*”),¹ The noted violation involves Rodriguez’s unauthorized operation of a CB radio on a frequency for which a license or authorization is required before operation.

2. On November 7, 2001, the Commission’s San Juan, Puerto Rico, Resident Agent Office (“San Juan Office”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to Rodriguez for a forfeiture in the amount of ten thousand dollars (\$10,000).² Rodriguez filed a response³ to the *NAL* on December 3, 2001.

II. BACKGROUND

3. On April 20, 1999, during an investigation of a complaint about interference to home electronic entertainment equipment, agents from the San Juan Office, using a mobile direction finding vehicle, observed radio transmissions on 26.715 MHz and determined the origin of those signals to be an antenna located in the backyard of a residence belonging to Mr. Javier Rodriguez (located at Carr 307, Km 6.5 Interior, Boqueron, Puerto Rico). After locating the source of the transmissions, the agents inspected the station at that address and observed that a modified CB radio (a Cobra 148 GTL transceiver) was installed at the station and was connected to a radio frequency power amplifier. During the inspection, the agents determined that Rodriguez was the operator of the station on 26.715 MHz. The

¹ 47 U.S.C. § 301.

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232680002 (Enf. Bur., San Juan Office, released November 7, 2001).

³ Although Rodriguez characterized his response as a Petition for Reconsideration of the *NAL* filed pursuant to 47 C.F.R. § 1.106, we will treat Rodriguez’s filing as a response to the *NAL* per 47 C.F.R. § 1.80(f)(3).

frequency 26.715 MHz is in a band allocated exclusively for use by the United States Government. That frequency is not authorized for operation by CB stations and Rodriguez had no authorization to operate on it.⁴ One of the investigating agents verbally warned Rodriguez during the inspection that unauthorized operation is prohibited by Section 301 of the Act.

4. On October 24, 2001, during an investigation of another complaint about interference to home electronic entertainment equipment, agents from the San Juan Office, using a mobile direction finding vehicle, observed radio transmissions on 26.705 MHz and determined the origin of those signals to again be an antenna located in the backyard of Rodriguez's residence at Carr 307, Km 6.5 Interior, Boqueron, Puerto Rico. After locating the source of the transmissions, the agents inspected the station located at that residence and observed that a modified CB radio (a Cobra 148 GTL transceiver) was installed at the station. During the inspection, the agents determined that Rodriguez was the operator of the station on 26.705 MHz. The frequency 26.705 MHz is in a band allocated exclusively for use by the United States Government. That frequency is not authorized for operation by CB stations and Rodriguez had no authorization to operate on it.

5. On November 7, 2001, the San Juan Office issued a *NAL* to Rodriguez in the amount of \$10,000 for the unlicensed operation observed on October 24, 2001. In his December 3, 2001, response to the *NAL*, Rodriguez argues that he is financially unable to pay the proposed forfeiture. As support, Rodriguez encloses copies of his Government of Puerto Rico income tax returns for 1998, 1999 and 2000 and documents indicating that he is unemployed. Rodriguez also argues that his violations are mitigated by his remedial action and his status as a first offender.

III. DISCUSSION

6. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁵ Section 1.80 of the Commission's Rules ("Rules"),⁶ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Policy Statement*"). Section 503(b) of the Act requires that, in examining Rodriguez's response, the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁷

7. Section 301 of the Act prohibits radio operation "except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act."

⁴ CB operation is permitted only on 40 channels located between 26.965 and 27.405 MHz. See 47 C.F.R. § 95.407.

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ 47 U.S.C. § 503(b)(2)(D).

8. Rodriguez does not deny the violations alleged in the *NAL*. In view of the facts set forth above, we conclude that Rodriguez operated without authorization on 26.705 MHz on October 24, 2001, in willful violation of Section 301 of the Act.

9. Rodriguez's violation on October 24, 2001, occurred despite a verbal warning from the Commission following his previous unlicensed operation on April 20, 1999. Rodriguez is, therefore, not a "first offender," and is not entitled to a reduction on that basis. Furthermore, remedial action subsequent to notification of a violation will not nullify a forfeiture penalty.⁸

10. On the basis of the documentation furnished by Rodriguez, we find that a reduction of the forfeiture to \$1,000 is appropriate.

11. We have examined Rodriguez's response to the *NAL* in light of the above statutory factors and the factors set forth in the *Policy Statement*. Taking all of these factors into account, we conclude that the proper forfeiture amount is \$1,000.

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,⁹ Javier Rodriguez **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$1,000 for willful violation of the provisions of Sections 301 of the Act.

13. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁰ Payment shall be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the *NAL*/Acct. No. 200232680002, and the FRN No. 0006-0437-80. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹¹

14. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested to Javier Rodriguez, P.O. Box 661, Boqueron, Puerto Rico 00622.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

⁸ See *KGVI, Inc.*, 42 FCC 2d 258, 259 (1973).

⁹ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹⁰ 47 U.S.C. § 504(a).

¹¹ See 47 C.F.R. § 1.1914.